



# ARIZONA DEPARTMENT OF TRANSPORTATION POLICIES AND PROCEDURES

## PER-2.01 AMERICANS WITH DISABILITIES POLICY

Effective: February 16, 2001  
Supersedes: PER-2.01 (1/1/1995)  
Responsible Office: Civil Rights Office (602) 712-7761

Review: February 16, 2003  
Transmittal: 2001 – February  
Page 1 of 8

### 1.01 PURPOSE

The purpose of this document is:

- a. To state ADOT's policy regarding the Americans with Disability Act (ADA) of 1990, and;
- b. To give guidance for the implementation of the policy.

### 1.02 SCOPE

This policy applies to all ADOT employees, programs, services, and activities.

### 1.03 AUTHORITY

The Americans with Disabilities Act (ADA) of 1990 and 42 United States Code sections 12101 through 12213 provides the authority for this policy.

### 1.04 BACKGROUND

The Americans with Disabilities Policy was first published in the ADOT Administrative Policies and Procedures Manual on October 1, 1992, as PER-2.01. The previous revision was completed to PER-2.01 on January 1, 1995, and expanded the list of requirements for employers and program/service providers. A complaint resolution procedure has been added as well as definitions. This policy is being reformatted and retyped to conform to the new policy requirements.

### 1.05 POLICY

ADOT supports the objectives of the ADA to ensure equal opportunity for individuals with disabilities in employment, public accommodations, programs, activities, and services.

### 1.06 WHAT IS THE ADA, WHAT DOES IT DO?

- a. Outlaws discrimination on the basis of disability in employment and in the provision of programs, activities and services;
- b. Requires employers to reasonably accommodate known physical or mental limitations of a qualified applicant, employee, or program/service participant, unless such accommodation would impose an undue hardship or result in a fundamental alteration in the program;
- c. Prohibits the use of employment tests and other selection criteria that screen out, or tend to screen out, individuals with disabilities, unless such test or criteria are shown to be job-related and are consistent with job requirements;

## PER-2.01 Americans with Disabilities Policy

Effective: February 16, 2001

Transmittal: 2001-February

Supersedes: PER-2.01 (1-1-95)

Page 2 of 8

---

- d. Bans the use of pre-employment medical/physical exams, but permits the use of post-offer medical/physical exams after a job offer is made, if the results are kept confidential, all persons offered employment are required to take the exam, and the results are not used to discriminate. Testing for illegal drugs is not considered a medical exam;
- e. Prohibits inquiries as to whether an applicant or employee is an individual with a disability or as to the nature or severity of the disability, but permits pre-employment inquiries into the abilities of an applicant to perform job-related functions;
- f. Permits employers to reject applicants or terminate employees who pose a direct threat to the health and safety of themselves or other individuals in the workplace;
- g. Requires that, when alterations are made to existing facilities, the altered portions be made accessible to the maximum extent feasible;
- h. Mandates that all new construction and alternations in public accommodations be accessible to the maximum extent feasible;
- i. Does not require the removal of physical barriers, such as stairs, in all existing buildings, as long as the programs are accessible to individuals who are unable to use an inaccessible facility.
- j. Permits the provision of services, programs, and activities offered in the facility to individuals with disabilities through alternative methods, if physical barriers are not removed, such as:
  - (1) Relocating a service to an accessible facility, e.g., moving an office from the third floor to the first floor of a building,
  - (2) Providing an aide or personal assistant to enable an individual with a disability to obtain the service;
  - (3) Providing benefits or services at an individual's home, or at an alternative accessible site.
- k. Prohibits carrying an individual with a disability as a method of providing program access, except in "manifestly exceptional circumstances;"
- l. Prohibits retaliation against an individual for asserting rights under ADA or participating in its enforcement;
- m. Requires employers to post notices stating the provisions of the ADA, and;
- n. Requires state and local governments to name an ADA coordinator to be responsible for ADA compliance and for establishing a grievance procedure to resolve complaints of disability discrimination.

### **1.07 ADA REQUIREMENTS**

- a. Employers ARE REQUIRED to:
  - (1) Comply with the provisions of the ADA to prohibit discrimination against an individual with a disability in hiring or promotion if the person is otherwise qualified for the job;

## PER-2.01 Americans with Disabilities Policy

Effective: February 16, 2001

Transmittal: 2001-February

Supersedes: PER-2.01 (1-1-95)

Page 3 of 8

---

- (2) Make reasonable accommodations for the known disability of a qualified applicant or employee if it would not impose undue hardship on the agency. The hiring supervisor is in the best position to decide when and how reasonable accommodation can be made;
  - (3) Refrain from asking a job applicant about the existence, nature or severity of a disability; however, a hiring supervisor may ask an applicant about his/her ability to perform specific job functions. A hiring supervisor may offer a job contingent on the applicant passing the medical exam, but only if the exam is required for all employees entering similar jobs. Medical exams must be job related;
  - (4) Post notices stating the provisions of ADA (See Exhibit 1);
  - (5) Appoint an ADA Coordinator to identify and correct practices not in compliance with the ADA. The Coordinator works closely with the Human Resources Office and the General Operations Group of the Transportation Services Group. The Administrator of the Civil Rights Office serves as the ADA Coordinator;
- b. Employers ARE NOT REQUIRED to:
- (1) Lower quality or production standards to make accommodations.
  - (2) Provide personal use items such as glasses or hearing aids.
- c. Program/Service providers ARE REQUIRED to:
- (1) Ensure the individuals with disabilities are not excluded from services, programs and activities because buildings are inaccessible;
  - (2) Provide programs and services in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity;
  - (3) Eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to enjoy their services, programs, or activities unless "necessary" for the provisions of the service, program or activity;
  - (4) Eliminate requirements that tend to screen out individuals with disabilities, such as requiring a driver's license as the only acceptable means of identification;
  - (5) Make reasonable modifications in policies, practices, and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration in the program would result;
  - (6) Furnish auxiliary aids and services when necessary to ensure effective communication, unless an undue burden or fundamental alteration would result, and;
  - (7) Operate their programs so that, when viewed in the entirety, they are readily accessible to and usable by individuals with disabilities.
- d. Program/Service providers ARE NOT REQUIRED to:
- (1) Eliminate safety requirements necessary for the safe operation of the program if they are based on actual risks and not on mere speculation, stereotypes or generalizations about individuals with disabilities.

## PER-2.01 Americans with Disabilities Policy

Effective: February 16, 2001

Transmittal: 2001-February

Supersedes: PER-2.01 (1-1-95)

Page 4 of 8

---

### 1.08 COMPLAINT RESOLUTION PROCEDURE

- a. Title I – Employment – The ADOT Employee Problem Solving Procedure, PER-9.01, will be used to resolve disability discrimination complaints within the agency. The Arizona State Personnel Complaint Procedure will be used to resolve disability complaints by applicants outside of ADOT.
- b. Title II – Programs, Services, and Activities – The Complaint Procedure is designed to provide prompt and equitable resolutions of complaints alleging non-compliance with Title II of ADA or discrimination on the basis of disability in the provision of services, activities or programs by ADOT.

#### Responsibility

#### Action

Participant

1. Writes the complaints describing ADOT's alleged discriminatory action in detail, include the nature and date of the alleged violation. The written complaint must also include the name, address and phone number of the participant filing the complaint.

Note: Complaints filed on behalf of classes or third parties must describe or identify the alleged victims of discrimination.

ADA Coordinator/CR Office

2. Provides sign language interpreters and print data access (such as large print, Braille or audiotape) during the complaint process.

Participant

3. Signs the complaint or authorizes someone to sign on his or her behalf.

4. Sends/takes/faxes the complaint to:

Arizona Department of Transportation  
Civil Rights Office, ADA Coordinator  
206 S. 17th Ave., 154A  
Phoenix, AZ 85007  
(602) 712-7761 or fax (602) 712-8429

Note: Additional documentation submitted by the participant after step 4 may cause the written response to be delayed by up to ten workdays.

ADA Coordinator/CR Office

5. Begins investigation by acknowledging receipt of written complaint.
6. Reviews participant's issues, facts, and pertinent policies and procedures prior to making a written response.
7. Interviews pertinent ADOT program administrators, reviews all policies and procedures.

## PER-2.01 Americans with Disabilities Policy

Effective: February 16, 2001

Transmittal: 2001-February

Supersedes: PER-2.01 (1-1-95)

Page 5 of 8

---

8. Meets with the participant within ten workdays from the receipt of the complaint to discuss the complaint and possible solutions.
9. Contact the Arizona Office for Americans with Disabilities for counsel and technical assistance if needed.
10. Responds in writing to the participant within ten workdays after meeting with the participant. The response must explain ADOT's position and offer options for substantive resolution of the complaint.

Participants

11. Accepts the written resolution or appeals to the ADOT Director, or his designee, within ten workdays after receipt of the response.

ADOT Director

12. Meets with the participant and/or the ADA Coordinator within ten workdays from receipt of the appeal to discuss the complaint and possible solutions.

OR

Proceeds to next step without the meeting(s).

13. Contacts the Arizona Office for Americans with Disabilities if needed.
14. Responds in writing to the participant:
  - (a) within ten workdays after meeting with the participant or ADA Coordinator, or
  - (b) within ten workdays after the receipt of the appeal if no meetings were held

Note: Response from the Director or his designee becomes the final resolution of the complaint.

ADA Coordinator/CR Office

15. Maintains the complaint files and records for a period of three years.

Exhaustion of the Complaint Resolution Procedure is not a prerequisite to filing a complaint with either a Federal agency or a court.

Any discussion regarding the Complaint Procedure should be restricted to those individuals responsible for responding to the complaint and those having knowledge pertinent to the investigation, resolution and/or response.

No person shall directly or indirectly use any official authority or influence in any manner to discourage the use of this procedure nor shall any employee suffer reprisal or retaliation in any form as a result of using this procedure.

## PER-2.01 Americans with Disabilities Policy

Effective: February 16, 2001

Transmittal: 2001-February

Supersedes: PER-2.01 (1-1-95)

Page 6 of 8

---

### 1.09 DEFINITIONS

#### **ADA of 1990, Title I**

The Americans with Disabilities Act of 1990 prohibits discrimination against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions and privileges of employment.

#### **ADA of 1990, Title II**

Prohibits discrimination against qualified individuals with disabilities in the provision of services, activities, and programs offered by public entities.

#### **Auxiliary Aids**

Includes such services or devices as qualified interpreters, assistive listening headsets, television captioning and decoders, telecommunication devices for deaf persons (TDD's), videotext displays, readers, taped texts, Brailled materials and large print materials.

#### **Disability**

With respect to an individual, means:

- (1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual; or
- (2) A record of such an impairment; or,
- (3) Being regarded as having such an impairment.

#### **Qualified Individual with a Disability**

**Employment** – An individual with a disability who satisfies the required skill, experience, and education requirements of the position he/she holds or would like to hold, and who, with or without reasonable accommodation can perform the essential functions of the position.

**Programs** – An individual with a disability who meets the essential eligibility requirements of the program or activity offered by the public entity.

## PER-2.01 Americans with Disabilities Policy

Effective: February 16, 2001

Transmittal: 2001-February

Supersedes: PER-2.01 (1-1-95)

Page 7 of 8

---

### **Reasonable Accommodation**

Includes any number of actions that remove surmountable barriers to employment of, or participation by, an individual with disabilities. Reasonable accommodation includes, but is not limited to, restructuring a job, modifying a job/service site, modifying a work schedule, providing auxiliary aids and services, and other actions taken to enable qualified individuals with disabilities to perform the essential functions of the position they hold or desire or to participate in services, programs, or activities offered by the agency. Reasonable accommodation may also include providing qualified readers or interpreters or even reassigning to a vacant position, in employment situations. Reasonable accommodation is very individual and cannot substantially change the nature of the job or program, service or activity and cannot put an employee in a position to harm himself or others.

### **Undue Hardship**

An action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.

## **1.10 IMPLEMENTATION OF POLICY**

The Human Resources Office, the Civil Rights Office and Organizational Unit Supervisors are ultimately responsible for the implementation of the program at the organizational level.

## **1.11 CORRESPONDING POLICIES**

- a. The Americans with Disabilities Act of 1990, 42 United States Code
- b. PER-9.01 ADOT Employee Problem Solving Procedure
- c. MGT-1.04 Public Meeting Policy

*The Americans with Disabilities Act of 1990, as amended, prohibits discrimination on the basis of disability, and protects qualified applicants, employees, and program participants with disabilities from discrimination in hiring, promotion, discharge, pay, job training, fringe benefits, all other aspects of employment, and from participation in programs, services and activities offered by the agency. The law also requires that the Arizona Department of Transportation provide qualified applicants, employees, and participants with disabilities, with reasonable accommodations that do not impose hardship. For further information, please call the Civil Rights Office of ADOT at (602) 712-7761.*